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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

In re) D.C. Case No.: 10-CV-00730-SVW
)
) Bankr. Case No. 6:07-bk-18293-PC
VALLEY HEALTH SYSTEM, a)
California Local Health Care District,) Adv. Pro. No. 6:09-ap-01708-PC
)
) Chapter 9
Debtor.)

PRIME HEALTHCARE)
MANAGEMENT, INC., a California)
Corporation; ALBERT L. LEWIS, JR.,)
a taxpayer and resident of the VHS local)
health care district; JOHN LLOYD, a)
taxpayer and resident of the VHS local)
healthcare district; EDWARD J.)
FAZEKAS, a taxpayer and resident of)
the VHS local health care district,)
Appellant,)

v.)

VALLEY HEALTH SYSTEM, a)
California local healthcare district;)
PHYSICIANS FOR HEALTHY)
HOSPITALS, INC., a California)
Corporation,)
Appellees.)

**NOTICE OF MOTION AND
APPELLEES' JOINT MOTION TO
DISMISS APPEAL AS MOOT**

Hearing
Date: November 22, 2010
Time: 1:30 p.m.
Judge: Hon. Stephen V. Wilson
Place: Courtroom 6
312 N. Spring Street
Los Angeles, CA 90012

1 Appellees, Valley Health System, a California Local Health Care District
2 (the "District"), and Physicians for Healthy Hospitals, Inc. ("PHH"), hereby move this
3 Court (by this "Motion"), under Federal Rule of Bankruptcy Procedure 8011(a), for an
4 order dismissing the above-captioned appeal (the "Appeal"), on the ground that it is
5 moot.

6 The District is the debtor in a case (the "Chapter 9 Case") under chapter 9
7 of title 11 of the United States Code (the "Bankruptcy Code") pending before the
8 United States Bankruptcy Court for the Central District of California (the "Bankruptcy
9 Court"). The District commenced the Chapter 9 Case on December 13, 2007. On
10 April 26, 2010, the Bankruptcy Court confirmed the District's "First Amended Plan
11 for the Adjustment of Debts of Valley Health System Dated December 17, 2009 as
12 Modified February 19, 2010" (the "Plan") by the "Order (i) Confirming First
13 Amended Plan for Adjustment of Debts of Valley Health System Dated December 17,
14 2009, as Modified February 19, 2010, and (ii) Granting Judgment for Valley Health
15 System in Each Challenge Action" (the "Confirmation Order").

16 PHH is the purchaser of substantially all of the District's assets (including
17 two hospitals) pursuant to the Plan and Confirmation Order.

18 Appellants, Prime Healthcare Management, Inc. ("Prime") (a competitor
19 of PHH and purported would-be bidder for the District's assets); Save the Hospitals,
20 Inc. (a corporation formed by Prime); and three individuals enlisted by Prime –
21 Albert L. Lewis, Jr., John Lloyd, and Edward J. Fazekas (collectively, the
22 "Appellants") appealed from the Confirmation Order. The Appellants never sought a
23 stay pending appeal of the Confirmation Order. The sale of the District's assets to
24 PHH (the "Sale") closed on October 13, 2010, and the Plan has been substantially
25 consummated pursuant to the unstayed Confirmation Order. As a result, this Appeal
26 should be dismissed as moot on two independently dispositive grounds.

27 First, under the long-standing bankruptcy mootness rule specifically
28 applicable to sales, the consummation of the Sale authorized by the Confirmation

Order rendered this Appeal moot. Second, under the established doctrine of equitable mootness in bankruptcy, the Plan has been so far implemented, in a manner affecting so many persons and entities, many of whom are not parties to this Appeal, that it would be impractical, unmanageable and inequitable to grant the Appellants relief from the Confirmation Order – particularly when they failed even to seek a stay pending appeal of the Confirmation Order.

This Motion is supported by the evidence compiled in the concurrently filed "Appendix to Appellees' Joint Motion to Dismiss" and by the declarations of Gary E. Klausner, John B. Marshall, Keith Marshall, and William E. Thomas.¹

I. INTRODUCTION

Valley Health System is a local health care district formed by resolution of the Board of Supervisors of Riverside County in 1943 to provide for local community hospitals in an underserved area. Initially, the District took over the operation of a small municipal hospital in Hemet. The District had taxing authority, but gave that up in the 1970's. Since the passage of Proposition 13 in 1978, the reinstitution of taxes or bonding authority requires a two-thirds vote of the electorate, which is difficult to obtain. Over time, the District made several significant additions to the hospital in Hemet and in the late 1980's built two additional hospitals serving the communities of Menifee and Moreno Valley. However, due primarily to changes in private and public reimbursement for health care, beginning in the late 1990's, the District began incurring significant operating losses. After several unsuccessful attempts to implement restructuring strategies, including a bond measure and a sale of the District's assets, which were not approved by the voters, the District filed its chapter 9 bankruptcy case in December 2007.

¹ The Appellants, themselves, also appear to agree that this Appeal is now moot. In their "Application for Extension of Time for Filing Brief" [Docket Nos. 20 & 22], in which the Appellants requested a 45-day extension for filing their opening brief, one of their stated grounds for the extension was that the anticipated closing of the Sale may render the Appeal moot.

1 After approximately a year and a half in the Chapter 9 Case, and unable
2 to develop an internal, "stand alone" restructuring plan, the District entered into a term
3 sheet and eventually an asset sale agreement (the "ASA") with PHH, pursuant to
4 which the District would sell, and PHH would purchase, substantially all of the
5 District's assets. The ASA provided the District, its community, employees, and
6 creditors with a viable solution to the District's financial problems, which had
7 threatened to force the closure of the District's hospitals. The District's Board of
8 Directors (the "Board") approved the ASA on October 6, 2009, and pursuant to
9 applicable law, scheduled an election through which the District's voters would be
10 asked to approve the sale to PHH. On November 2, 2009, the District also filed a
11 chapter 9 plan, and a disclosure statement, under which it proposed payments for all of
12 its creditors, based upon the closing of the transactions contemplated by the ASA.

13 In October 2009, shortly after the Board approved the ASA and
14 scheduled the election, Appellants began a series of actions challenging the proposed
15 sale and the election, both in state court and in the Bankruptcy Court (the "Challenge
16 Actions"). These challenges were spearheaded by Prime, which had sought
17 unsuccessfully to acquire the District's assets. Prime formed Appellant Save Our
18 Hospitals, Inc.; enlisted the individual Appellants to join in the Challenge Actions;
19 and financed the Challenge Actions in its campaign to block PHH's purchase of the
20 District's assets to pursue its own agenda regarding those assets.

21 Prime's campaign failed. The community that the District serves and the
22 District's creditors each approved the Sale to PHH by overwhelming majorities. The
23 District's voters approved the proposed sale to PHH by a vote of approximately 87%
24 and the Plan was accepted by more than 97% of the District's creditors. After a six-
25 day trial in connection with confirmation of the Plan, and after taking the matter under
26 submission for five weeks, the Bankruptcy Court issued an 82-page Memorandum
27 Decision in which it concluded that: (i) the Plan should be confirmed, (ii) all
28 objections should be overruled, and (iii) the District and PHH should be granted

1 judgment in their favor in all of the Challenge Actions. On April 26, 2010, the
2 Bankruptcy Court entered the Confirmation Order.

3 On May 6, 2010 Appellants filed their Notice of Appeal from the
4 Confirmation Order. Appellants never sought a stay of the Confirmation Order.
5 Nevertheless, Appellants seek reversal of the Confirmation Order, notwithstanding the
6 facts that the Sale has been consummated; the bulk of the Sale proceeds received by
7 the District have been distributed to creditors of the District who are not parties to this
8 Appeal; the rights and interests of hundreds of parties, who are not parties to this
9 appeal, have been irrevocably altered by the consummation of the Sale; and the
10 District no longer has the capacity to operate the healthcare facilities that were
11 transferred to PHH.

12 This Motion does not address the merits of the Appeal. This Court need
13 not reach the merits because, now that the Sale has closed and the Plan has been
14 substantially consummated, the Appeal is moot and must be dismissed.

15 Equitable mootness is a prudential doctrine developed in bankruptcy
16 cases to address the practical necessities entailed in consummating transactions
17 authorized by the bankruptcy courts. It is often applied in the context of orders
18 confirming plans. Because plan confirmation orders often authorize commercial
19 transactions that require action and reliance by third parties, those parties must be
20 assured that a transaction that is consummated pursuant to an unstayed confirmation
21 order is not at risk of being "unwound" months or years later by an appeal of the
22 unstayed order. The equitable mootness doctrine is also based on the impracticality of
23 trying to "unscramble the eggs" once a confirmed plan has been substantially
24 consummated pursuant to an unstayed confirmation order. Based on such
25 considerations, courts have consistently held that once a plan has been substantially
26 consummated, an appeal from the confirmation order that would disturb transactions
27 undertaken under the plan will be dismissed on mootness grounds. *See, e.g., Trone v.*
28 *Roberts Farms, Inc. (In re Roberts Farms, Inc.)*, 652 F.2d 793, 797 (9th Cir. 1981).

1 Sun City, and the surrounding unincorporated areas, and is home to approximately
2 360,000 residents. John Marshall Decl. ¶ 5.

3 Faced with a liquidity crisis that threatened its continued operations, the
4 Board concluded that filing a chapter 9 petition was necessary to permit the District to
5 continue its operations while it developed a restructuring plan. The District filed its
6 bankruptcy petition on December 13, 2007. The Bankruptcy Court entered an order
7 for relief in the Chapter 9 Case on February 20, 2008. John Marshall Decl. ¶ 6.

8 **B. The Asset Sale Agreement with PHH, the Election on Measure P and the**
9 **Plan of Adjustment.**

10 At the start of the Chapter 9 Case, the District owned and operated three
11 acute care hospitals. The District sold one hospital in June 2008 and continued to
12 operate the other two hospitals, Hemet Valley Medical Center and Meniffee Valley
13 Medical Center (the "Hospitals"). The District also operated a skilled nursing facility,
14 which it converted to a chemical dependency treatment center and a post-treatment
15 retreat center. John Marshall Decl. ¶ 7.

16 On October 6, 2009, at a special public meeting, the Board considered
17 and approved the ASA, which provided for the sale of substantially all of the District's
18 assets to PHH. Under state law, the District was required to obtain voter approval
19 before selling more than 50% of its assets.² Accordingly, the District scheduled an
20 election on a ballot proposition, Riverside County Measure P ("Measure P"), for
21 December 15, 2009, for public approval of the sale to PHH of substantially all of the
22 District's assets pursuant to the ASA. Measure P passed with "yes" votes cast by
23 eighty-seven percent (87%) of voters. John Marshall Decl. ¶ 8.

24 Following the Board's approval of the ASA, on November 2, 2009, the
25 District filed its chapter 9 plan of adjustment, which was premised on the ASA, along
26 with a related disclosure statement.

27
28 ² Cal. Health & Safety Code § 32121(p).

As of October 6, 2009, none of the Appellants was a creditor of the District, or had any financial interest in the District's Chapter 9 Case.³ Nevertheless, after the Board approved the ASA at the October 6, 2009 Board meeting, Appellants, purporting to act as "citizens" of the District, launched a multi-front attack on the proposed sale by filing actions in the Superior Court for the County of Riverside and motions in the Bankruptcy Court (collectively, the "Challenge Actions") challenging the Sale. John Marshall Decl. ¶ 9.

The Challenge Actions included the following:

- (i) an action against the Riverside County Registrar of Voters seeking to rewrite the language on the ballot describing Measure P;
- (ii) an action against the District seeking turnover of certain documents and records based on various statutory provisions;
- (iii) an action against the District to invalidate the Board's approval of the ASA, based on allegations that in approving the ASA, the District violated the California Environmental Quality Act, Cal. Pub. Res. Code § 21000 *et seq*; and
- (iv) a motion for relief from the automatic stay to pursue an action in state court against the District and certain Board members to nullify or invalidate the ASA based on allegations of violations of various provisions of state law.⁴

³ One of the Appellants, Prime, had unsuccessfully sought to bid on the District's assets. Its status as an unsuccessful bidder did not, however, give it standing to object to the Plan or the Sale. *See, e.g., In re Rook Broad. of Idaho, Inc.*, 154 B.R. 970, 974 (Bankr. D. Idaho 1993) (prospective purchasers do not have standing to object to a plan and disclosure statement); *In re Crescent Mfg. Co.*, 122 B.R. 979, 981 (Bankr. N.D. Ohio 1990) (potential purchasers do not have standing to object to a motion for an extension of time for the debtor to file a plan); *In re Karpe*, 84 B.R. 926, 929 (Bankr. M.D. Pa. 1988) (prospective purchasers do not have standing to present a motion for hearing on a higher bid). Two years after the Chapter 9 Case was filed, to create such standing, Prime purchased a \$4,920 claim against the District. The original holder of which voted in favor of the Plan.

⁴ In addition to these Challenge Actions, Appellants also filed an action to enjoin the election on Measure P; however, Appellants failed to obtain any injunctive relief and the action became moot following the election.

1 To expedite resolution of the Challenge Actions, the District and
 2 Appellants stipulated that all of the Challenge Actions would be tried in the
 3 Bankruptcy Court as part of the plan confirmation process and that the Bankruptcy
 4 Court would have jurisdiction to adjudicate all of the issues pertaining to these
 5 actions. The Bankruptcy Court entered an order on December 23, 2009 approving the
 6 District's disclosure statement, which provided for the Bankruptcy Court to hear and
 7 decide the Challenge Actions as part of the Plan confirmation process.⁵

8 **C. Confirmation Hearings and Judgment for Appellees on the Challenge**
 9 **Actions.**

10 On January 25, 2010 – the deadline to file objections to confirmation of
 11 the Plan – Prime purchased a \$4,920 general unsecured claim from one of the
 12 District's creditors who had voted the claim in favor of the Plan and thereby purported
 13 to acquire standing to object to the Plan.⁶ On the same day, Prime filed an objection
 14 to the Plan.

15 The District's Plan was accepted by over ninety-seven percent (97%) of
 16 its creditors who voted on the Plan. The hearing on confirmation of the Plan (the
 17 "Confirmation Hearing") commenced on February 9, 2010, by which time all
 18 objections to the Plan, except for Prime's, had been withdrawn. Prime's Plan
 19 objections were based on its contentions that: (1) PHH did not have the financial
 20 resources to fund the closing of the Sale ("feasibility"), and (2) the various claims set
 21 forth in the Challenge Actions made the ASA unenforceable.

22 The hearing on feasibility took place on February 22, 2010. On
 23 February 23, 2010, the Bankruptcy Court ruled that the District had provided
 24

25 ⁵ See Order approving the disclosure statement, dated December 23, 2009. App. at
 26 Ex. 7. The parties memorialized their agreement regarding the Bankruptcy Court's
 27 resolution of the Challenge Actions in a subsequent stipulation, which was
 28 approved by Bankruptcy Court order entered January 22, 2010. App. at Ex. 8.
 None of these orders were appealed.

⁶ The prior holder of the \$4,920 claim had voted in favor of Plan confirmation.

1 sufficient evidence of feasibility and overruled Prime's feasibility objection. *See App.*
 2 at Ex. 9 (Tr. 2:3-9:20, Feb. 23, 2010).

3 The Challenge Actions were tried for four full court days, from February
 4 23 through 26. During that trial, the parties presented ten witnesses, introduced more
 5 than one hundred pieces of evidence, and presented extensive oral argument at the
 6 conclusion of the trial. The Bankruptcy Court then took the matter under submission.

7 On April 8, 2010, the Bankruptcy Court issued a comprehensive, 82-page
 8 Memorandum Decision, App. at Ex. 2, in which the court analyzed each of the
 9 Challenge Actions, reviewed all the evidence and law applicable to each of
 10 Appellants' contentions, and articulated its findings. The Bankruptcy Court concluded
 11 that the District was entitled to a judgment overruling Appellants' remaining Plan
 12 objections and that the District and PHH were entitled to judgments dismissing each
 13 of the Challenge Actions with prejudice. On April 26, 2010, the Bankruptcy Court
 14 entered the Confirmation Order.⁷ App. at Ex. 1. This Appeal followed.

15 **D. The Plan Has Been Consummated, Multiple Transactions Have Closed,**
 16 **and The Economic Interests of Many Parties Who Are Not Before The**
 17 **Court Have Been Irreversibly Affected, All in Reliance on the Unstayed**
Confirmation Order.

18 With the Plan confirmed and no stay of the Confirmation Order having
 19 been sought or obtained, the District and PHH closed the Sale on October 13, 2010.
 20 John Marshall Decl. ¶ 13. The "Effective Date" of the Plan was October 13, 2010.
 21 Klausner Decl. ¶ 12. The District began implementing the Plan immediately, as many
 22 of the payment obligations under the Plan came due upon the Closing Date. To date, a
 23 multitude of transactions involving hundreds of parties who are not before the Court
 24 has taken place based on the Confirmation Order and the closing of the Sale in
 25 accordance with that order. These transactions include the following:

26
 27
 28 ⁷ Appellants did not object to the form of the Confirmation Order submitted to the
 Bankruptcy Court by the District.

1 1. The District has disbanded its management and, as of October 12,
2 2010, terminated its employment of over 1,300 employees who were working at the
3 Hospitals. All of the Hospitals' operations are now being managed by PHH.⁸ John
4 Marshall Decl. ¶ 14.a. The District no longer has any source of revenue, capital, or
5 employees, with the exception of \$400,000 a year to be paid by PHH to carry on its
6 mandated functions as a public entity for up to five years. *Id.*

7 2. PHH paid approximately \$58 million in cash to the District at
8 closing. Thomas Decl. ¶ 4. PHH financed approximately \$31 million of the purchase
9 price through loans from third-party lenders which are secured by liens in favor of
10 those lenders on the assets sold to PHH pursuant to the Confirmation Order.
11 Approximately \$30 million of the funds came from a consortium of local physicians,
12 who are investors in and members of Physicians for Healthy Hospitals, LLC, a
13 California limited liability company, the sole shareholder of PHH. *Id.* ¶ 4.

14 3. The District has distributed approximately \$48 million of the Sale
15 proceeds to the indenture trustee for the District's special revenue bondholders, in full
16 satisfaction of such parties' secured claims. John Marshall Decl. ¶ 14.b; Keith
17
18

19 ⁸ As of the closing date of the Sale, PHH had not yet obtained all of the licenses,
20 permits and other authorizations and certifications from governmental agencies,
21 including hospital licenses and Medicare certification, required to operate hospitals
22 and to obtain Medicare and Medi-Cal reimbursement (collectively, the
23 "Licensure"). The need to provide an interim arrangement for management and
24 financial responsibility for the time period during which a purchaser is obtaining
25 all necessary licenses and certifications is a standard post-closing item in
26 California hospital sale transactions in which the purchaser is not licensed at the
27 time of sale. That process is anticipated to take one to two months to complete.
28 Accordingly, as contemplated in the ASA, the District and PHH entered into a
Lease and an Interim Management Agreement, pursuant to which the District
leased back the hospital facilities to PHH and PHH agreed to provide all
management functions (including the provision of all personnel), and PHH
assumed all financial responsibility for any losses, and retains all profits, during
this interim period. The interim Lease and Management Agreement will terminate
once PHH obtains all necessary Licensure, or nine months after the closing date,
whichever occurs first. John Marshall Decl. ¶ 14.a n.2.

1 Marshall Decl. ¶ 3. The indenture trustee has distributed these funds to the individual
2 bondholders. Keith Marshall Decl. ¶ 4.

3 4. PHH has assumed the District's administrative obligations under a
4 \$9 million note owed to Select VHS Acquisition Company, LLC ("Select"). John
5 Marshall Decl. ¶ 14.b. Under the terms of the Plan, Select has no further recourse
6 against the District. Klausner Decl. ¶ 16.

7 5. PHH has assumed substantially all of the District's "current"
8 administrative liabilities, estimated at approximately \$31 million as of the date of the
9 Sale closing. Marshall Decl. ¶ 14. Under the terms of the Plan, none of the claimants
10 whose claims have been assumed by PHH has any further recourse against the
11 District. Klausner Decl. ¶ 17.

12 6. PHH has assumed approximately \$55 million in general unsecured
13 claims owed by the District to holders of what are classified in the Plan as Class 2B
14 claims, resulting from the rejection and/or breach of such parties' contracts. Klausner
15 Decl. ¶ 18 and Thomas Decl. ¶ 6. Under the terms of the Plan, none of these creditors
16 has any further recourse against the District. Klausner Decl. ¶ 18.

17 7. PHH has hired over 1,300 employees to work in the Hospitals.
18 Thomas Decl. ¶ 5. PHH has also caused the District's liability for severance, vacation,
19 paid time off and other benefits to be paid out. *Id.* ¶ 5.

20 8. The District has "assumed and assigned" to PHH approximately
21 four hundred executory contracts and unexpired leases with various entities, including
22 without limitation, insurance agents, medical groups, pharmacies and other medical
23 service providers, software and equipment lessors and licensors, and insurance
24 companies.⁹ Klausner Decl. ¶ 15. PHH is now liable for all current and future

25 ⁹ Bankruptcy Code section 365(b) provides that, where there have been prepetition
26 and/or postpetition defaults under executory contracts or unexpired leases that a
27 debtor seeks to assume, the debtor must cure any such defaults before it is allowed
28 to assume such contracts. Therefore, in compliance with (i) the Bankruptcy
Court's orders authorizing the District's assumption of certain contracts and leases
pursuant to the Plan (some of which were subsequently assigned to PHH), and

1 amounts due and owing under such contracts, including any damages that may result
 2 from the breach or early termination thereof, and the contract parties have no recourse
 3 against the District.¹⁰ Klausner Decl. ¶ 15.

4 9. The District has also assumed:¹¹ (i) approximately forty payor
 5 contracts (such as with Aetna, Blue Shield, etc.), which it will assign to PHH once
 6 PHH obtains its Licenses; and (ii) approximately forty physician and government
 7 contracts (such as with Medi-Cal and Medicare), which the District will terminate
 8 once PHH has obtained all necessary licenses and Medicare Certifications and is able
 9 to enter into new agreements with these persons and entities. Klausner Decl. ¶ 19. As
 10 part of such assumptions. PHH is now liable, in 100 cent dollars, for all current and
 11 future amounts due and owing under such contracts, including any damages that may
 12 result from the early termination thereof. Klausner Decl. ¶ 19.

13 10. The District has rejected and/or terminated approximately thirty
 14 prepetition and postpetition agreements with, among others, laboratories, technical
 15 service providers, medical service providers, and surgical centers, which are required
 16 for the operation of the Hospitals but which PHH decided not to assume. *Id.* ¶ 20.

18 (ii) PHH's obligations under the ASA, PHH cured all existing monetary defaults
 19 under all of the contracts that the District assumed and assigned to PHH upon the
 Closing Date.

20 ¹⁰ Once a debtor in a bankruptcy case assumes a prepetition executory contract or
 21 unexpired lease, all of the prepetition and postpetition obligations under that
 22 contract or lease become administrative liabilities of the estate, and any future
 23 rejection of the contract or lease will generally give rise to an administrative claim.
 24 *See generally* 11 U.S.C. §§ 365(b), 365(g)(2). To the extent that contracts were
 25 assumed and assigned to PHH under the Plan, the District has no liability for any
 26 breach of contract occurring after the assignment, and any such liability will be the
 exclusive liability of PHH. *See* 11 U.S.C. § 365(k). Thus, PHH is now liable to
 counterparties who are not parties to this Appeal for all amounts outstanding under
 all of the assumed contracts, in hundred cent dollars, as well as any early
 termination fees that may accrue if such contracts are terminated before they expire
 by their own terms.

27 ¹¹ Such contracts were assumed subject to PHH's assumption of liability for these
 28 obligations under the ASA and the Management Agreement, as discussed *supra*
 note 7.

11. PHH has assumed all of the District's contractual relationships with, among others, the federal government, vendors, payors, suppliers, physicians, pharmacies, medical service providers, and insurance companies. Thomas Decl. ¶ 6.

12. PHH has assumed the District's collective bargaining agreements. *Id.* ¶ 7.

13. PHH has paid to the District the first of five annual \$400,000 payments to be used for the District's post-closing operations, as provided for in the Plan and ASA, and pursuant to the Lease and Management Agreement described *supra* note 7. John Marshall Decl. ¶ 14.e.

14. PHH has paid the District \$4 million to be used for the District's administrative expenses and to the extent not so used, for distribution to unsecured creditors pursuant to the Plan. *Id.* ¶ 14.f.

These are just some of the complex financial, legal, and contractual transactions that have occurred in reliance on the Confirmation Order and, pursuant to PHH's acquisition of the District's assets, under the ASA. Importantly, except for the District and PHH, *none* of the parties identified in paragraphs 1-14, above, is a party to this Appeal. It would be impossible to "undo" these transactions in an effective or equitable manner.

III. ARGUMENT

A. **Because of the Special Need for Finality in Bankruptcy Proceedings, Appeals of Unstayed Sale Orders And Plan Confirmation Orders Are Moot Once The Sale Closes Or The Plan Is Substantially Consummated.**

There are three types of mootness that may require the dismissal of appeals from bankruptcy court orders: constitutional, equitable, and statutory. Constitutional mootness is a limit on the jurisdiction of federal courts. U.S. Const. art. III, § 2; *see also Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94, 118 S. Ct. 1003 (1998). A federal court not empowered to issue opinions on moot questions or declare rules of law that cannot affect the matter in the case before it. *Id.* Thus, when an intervening event prevents the appellate court from granting effective relief or

1 renders a decision unnecessary, an appeal must be dismissed for lack of jurisdiction on
2 mootness grounds. *See, e.g., Ruvalcaba v. City of Los Angeles*, 167 F.3d 514, 520
3 (9th Cir. 1999); *Chew v. Gates*, 27 F.3d 1432, 1437 (9th Cir. 1994).

4 Equitable mootness is a prudential doctrine that recognizes independent
5 equitable grounds for dismissing as moot appeals from bankruptcy court orders that
6 authorize a debtor to enter into transactions when the transactions are implemented in
7 the absence of a stay pending appeal. Equitable mootness differs from constitutional
8 mootness because, while it may not technically be impossible for the appellate court to
9 grant effective relief, it nonetheless would be inequitable because of a change of
10 circumstances resulting from the implementation of the unstayed order and the unique
11 circumstances found in the bankruptcy context. "Unlike Article III mootness,
12 equitable mootness is prudential, not jurisdictional." *In re Vineyard Bay Dev. Co.*,
13 132 F.3d 269, 271 (5th Cir. 1998). Under this doctrine, "an appeal should . . . be
14 dismissed as moot when, even though effective relief could conceivably be fashioned,
15 implementation of that relief would be inequitable." *Official Comm. of Unsecured*
16 *Creditors of LTV Aerospace & Def. Co. v. Official Comm. of Unsecured Creditors of*
17 *LTV Steel Co. (In re Chateaugay Corp.)*, 988 F.2d 322, 325 (2d Cir. 1993).

18 Unlike typical litigation seeking money damages, a bankruptcy court is
19 frequently called upon to authorize business transactions with third parties, who must
20 be able to rely on such authorizing orders in closing the relevant transaction. For
21 example, under chapter 9 of the Bankruptcy Code, a debtor requires the bankruptcy
22 court's approval to confirm a plan of adjustment, which may be premised upon a sale
23 of assets. *See* 11 U.S.C. §§ 943, 904. Understandably, parties will be reluctant to
24 transact business with a debtor or rely on a confirmation order, even in the absence of
25 a stay, if the bankruptcy court's order may be overturned, and complex business
26 transactions unwound on appeal, months or years later.

27 In addition, the implementation of a plan of reorganization may involve a
28 multitude of transactions, including asset transfers; distributions to creditors; the

1 rejection, assumption, and assumption and assignment of contracts with many
 2 counterparties; and the actions of still other parties in reliance on the state of affairs
 3 created by the implementation of the plan. The courts have recognized that there
 4 comes a point at which the implementation of a plan confirmed by an unstayed
 5 confirmation order has produced such extensive and comprehensive changes in the
 6 parties' positions that it would be impracticable (or even impossible) to restore the
 7 parties to the position that they occupied immediately before confirmation of the plan.
 8 To address this concern, equitable mootness bars "unscrambling the egg." *Baker &*
 9 *Drake, Inc. v. Public Serv. Comm'n*, 35 F.3d 1348, 1352 (9th Cir. 1994).¹²

10 Even outside the plan confirmation context, the Bankruptcy Code and
 11 case law limit an appellate court's ability to fashion relief from an unstayed order
 12 authorizing a sale of assets once the sale authorized by that order has been

13
 14 ¹² See also *In re Roberts Farms*, 652 F.2d at 797 (dismissing appeal as moot where
 15 requested relief would unravel the plan and create unmanageable situation for
 16 bankruptcy court); *Ederel Sport v. Gotcha Int'l L.P.*, 311 B.R. 250, 254 (9th Cir.
 17 B.A.P. 2004) (finding an appeal becomes "equitably moot" when "a
 18 comprehensive change of circumstances may make it inequitable to consider the
 19 merits of the appeal and prevents [a court] from fashioning effective relief."); *BC*
 20 *Brickyard Assocs., Ltd. v. Ernst Home Ctr., Inc. (In re Ernst Home Ctr., Inc.)*, 221
 21 B.R. 243, 247 (9th Cir. B.A.P. 1998) (dismissing appeal of sale order as moot
 22 where appellant failed to obtain a stay and sale was consummated); *In re Clarke*,
 23 98 B.R. 979, 980 (9th Cir. B.A.P. 1989) (dismissing appeal as moot where the plan
 24 has been substantially consummated); *Washington v. Islands Bakery P'ship (In re*
 25 *Islands Bakery P'ship)*, 179 B.R. 243, 244-45 (W.D. Wash. 1995) (dismissing an
 26 appeal of a substantially consummated plan as moot); *In re 203 N. LaSalle St.*
 27 *P'ship*, 126 F.3d 955, 961 (7th Cir. 1997), *cert. granted*, 118 S. Ct. 1674 (1998)
 28 (holding an appeal should be dismissed as moot if the relief requested requires
 modification of a confirmed and implemented plan and would upset legitimate
 expectations or "bear unduly on the innocent"); *In re Envirodyne Indus., Inc.*, 29
 F.3d 301, 304 (7th Cir. 1994) (stating that in determining whether an appeal is
 moot, a court must consider the effects of the relief requested on innocent third
 parties); *Miami Ctr. Ltd. P'ship v. Bank of N.Y.*, 838 F.2d 1547 (11th Cir. 1988)
 (same); *In re Public Serv. Co.*, 963 F.2d 469, 473 (1st Cir. 1992) (finding an appeal
 should be dismissed if the requested relief would be either inequitable or
 impracticable in light of the change of circumstances); *In re Adelphia Commc'n*
Corp., 367 B.R. 84, 91 (S.D.N.Y. 2007) (finding that mootness of appeals of
 confirmation orders is generally "presumed when the reorganization plan has been
 substantially consummated during the pendency of the appeal.").

1 consummated. In an example of the third type of mootness – statutory mootness –
 2 section 363(m) of the Bankruptcy Code provides that the reversal or modification on
 3 appeal of an unstayed order authorizing a sale does not affect the validity of the sale if
 4 the purchase was made in good faith.¹³ But the policy considerations underlying
 5 section 363(m) are not limited to sales authorized under section 363, and the
 6 bankruptcy sale mootness doctrine is not limited to sales authorized under section 363
 7 of the Bankruptcy Code. The purpose of the bankruptcy sale mootness rule is to
 8 encourage finality in bankruptcy sales, which serves the dual goals of enhancing the
 9 value of the estate's property and protecting the rights of third-party purchasers reliant
 10 on sale orders;¹⁴ thus, in the Ninth Circuit, the bankruptcy sale mootness rule applies
 11 to all orders authorizing sales in bankruptcy proceedings. *See, e.g., Algeran, Inc. v.*
 12 *Advance Ross Corp.*, 759 F.2d 1421, 1424 (9th Cir. 1985).¹⁵

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 17 ¹³ The Bankruptcy Court found that PHH was a good faith purchaser. *See* App. at
 18 Ex. 1 (Confirmation Order ¶ 15) ("[A]ll actions taken by the [District], PHH or any
 19 other person or entity in connection with the implementation of the Plan, including
 the Closing of the ASA shall be deemed to have been taken in good faith and in
 accordance with all applicable law.")

20 ¹⁴ In fact, the principle that the consummation of a sale authorized by the bankruptcy
 21 court moots an appeal from the order authorizing the sale pre-dates the Bankruptcy
 22 Code, section 363(m) or any other codification of that principle by rule or statute.
 23 *See, e.g., In re Combined Metals Reduction Co.*, 557 F.2d 179, 186 (9th Cir. 1977)
 24 (dismissing as moot appeals from sale orders in case under Chapter X of former
 Bankruptcy Act); *Taylor v. Austrian*, 154 F.2d 107 (4th Cir. 1946) (consummation
 of sale of securities rendered moot an appeal from order authorizing trustee in case
 under Chapter X of former Bankruptcy Act to sell such securities).

25 ¹⁵ *See also, e.g., In re Onouli-Kona Land Co.*, 846 F.2d at 1172 (the bankruptcy
 26 mootness rule is not limited to sales under section 363 but applies in all bankruptcy
 27 proceedings "when an appellant has failed to obtain a stay from an order that
 permits a sale of a debtor's assets."); *Nat'l Mass Media Telecomm. Sys. v. Stanley*
 28 *(In re Nat'l Mass Media Telecomm. Sys.)*, 152 F.3d 1178, 1181 (9th Cir. 1998)
 (same); *In re Weston*, 110 B.R. 452, 458 (E.D. Cal. 1989) (same); *In re Sewanee*
Land, Coal & Cattle, Inc. 735 F.2d 1294, 1296 (9th Cir. 1984).

B. This Appeal Is Moot Under The Bankruptcy Mootness Rule Specifically Applicable to Sales.

Under the long-standing bankruptcy mootness rule specifically applied to sales, the consummated Sale cannot be disturbed or "undone." In the Ninth Circuit, an appeal of an order that authorizes a sale of a debtor's assets to a good faith purchaser is *per se* moot for lack of jurisdiction if the appellant fails to obtain a stay pending appeal. *See In re Onoili-Kona Land Co.* 846 F.2d at 1171.¹⁶ Although this judicial mootness rule was codified in section 363(m), the codification did not abrogate the long-standing common law by limiting the doctrine to sales under section 363 of the Bankruptcy Code. *See Algeran, Inc. v. Advance Ross Corp.*, 759 F.2d at 1424. Instead, the judicial rule applies to any unstayed order authorizing or approving a sale of assets in a bankruptcy proceeding once the sale approved by that order closes. *Id.* Such appeals must be dismissed as moot, regardless of whether the purchaser is party to the appeal or whether relief would otherwise be possible in the absence of the doctrine. *In re Onoili-Kona Land Co.* 846 F.2d at 1171.¹⁷

Here, the Bankruptcy Court specifically found that PHH acted in a good faith when purchasing the District's assets. App. at Ex. 1 (Confirmation Order ¶15), *quoted supra* note 13. Appellants did not challenge this finding in the Chapter 9 Case and have not sought review of the good faith finding in the Appeal. Thus, the Appeal must be dismissed as moot under the bankruptcy sale mootness doctrine.

¹⁶ *See also In re Nat'l Mass Media Telecomm. Sys.*, 152 F.3d at 1181; *Algeran, Inc. v. Advance Ross Corp.*, 759 F.2d at 1424.

¹⁷ The limited exception to the bankruptcy mootness rule recognized by the Ninth Circuit – where real property subject to statutory rights of redemption is sold to a creditor who is party to the appeal – is not applicable here. *In re Onoili-Kona Land Co.* 846 F.2d at 1173. First, the purchaser, PHH, was not a creditor in the bankruptcy case. Second, while the property sold may include real property, the assets sold primarily were the Hospitals as a going concern business. Third, there is no right of redemption. The fact that PHH is party to the appeal is irrelevant if the other grounds for the exception are not met. *Id.* at 1173 ("No such justification supports a broader exception for all real property sold to a creditor who is party to the appeal").

C. The Appeal Should be Dismissed as Equitably Moot Because the Complex Transactions Consummated Pursuant to the Plan Should Not, and in Most Instances Cannot, be Unraveled.

In determining whether a bankruptcy appeal is equitably moot, courts analyze: (1) whether appellants obtained a stay pending appeal; (2) whether the plan has been substantially consummated in the absence of a stay; (3) whether the relief requested would affect the rights of third parties not before the court; (4) whether the relief requested would affect the success of the plan by creating an unmanageable, uncontrollable situation for the bankruptcy court; and (5) the public policy of affording finality to bankruptcy judgments. *In re Cont'l Airlines*, 91 F.3d 553, 560 (3d Cir. 1996); *In re Roberts Farms*, 652 F.2d at 797. All of these elements need not be present in order for equitable mootness to apply. *Id.* Here, however, each of these elements does exist; consequently, the Appeal should be dismissed as equitably moot.

1. Appellants Did Not Seek a Stay of the Confirmation Order.

The Ninth Circuit has highlighted the failure to obtain a stay pending appeal (such as that of the Appellants) as a basis for dismissing an appeal as moot:

In the field of the administration of estates under the bankruptcy laws, the policy of the law strongly supports a requirement that a stay be obtained if review on appeal is not to be foreclosed because of mootness. . . .

[T]he practical necessities involved in a successful reorganization require that unless an order of the bankruptcy judge or the district judge is stayed pending appeal, the trustee's acts in accordance with that order should not thereafter be subject to reversal, even if the order is subsequently overturned on appeal.

In re Roberts Farms, Inc., 652 F.2d at 796-98 (citation and quotation marks omitted).¹⁸

¹⁸ See also *Ewell v. Diebert (In re Ewell)*, 958 F.2d 276 (9th Cir. 1992) (dismissing appeal as moot where transfer of property occurred prior to appellant seeking stay pending appeal); *Kaonohi Ohana, Ltd. v. Sutherland (In re Kaonohi Ohana, Ltd.)*, 873 F.2d 1302, 1306 (9th Cir. 1989) (dismissing appeal of district court order

1 By failing even to seek a stay of the Confirmation Order, Appellants
2 accepted the risk that the complex transactions envisioned in the Plan would be so
3 substantially consummated that the relief requested in the Appeal would become
4 impracticable, and the Appeal would become moot. Appellants were aware that:
5 (i) the ASA required the parties to close the Sale as soon as possible after the
6 Confirmation Order was entered; (ii) the Sale would leave the District with no funds,
7 assets, management or employees that would enable it to resume operation of the
8 Hospitals; (iii) third party lenders would loan funds secured by the purchased assets;
9 (iv) third party creditors would be obligated to release the District and accept PHH's
10 assumption of obligations owed to them; and (v) PHH would take over the operation
11 of the Hospitals, hire employees and enter into a multitude of contracts in connection
12 therewith, all in reliance on the unstayed Confirmation Order.

13 The Appellants also knew that numerous third parties who are not parties
14 to this Appeal, including creditors, employees, contract parties, investors, and lenders,
15 would alter their rights and enter into a series of transactions, many of them complex,
16 in reliance on the unstayed Confirmation Order and PHH's acquisition of assets
17 pursuant thereto. Allowing the Appeal to continue after Appellants' failure even to
18 seek a stay of the Confirmation Order would be particularly inequitable. *See, e.g.,*
19 *Unaffiliated S'holders v. Mega-C Power Corp. (In re Mega-C Power Corp.)*, 295 Fed.
20 Appx. 242, 244 (9th Cir. 2008) (citing *Roberts Farms* and dismissing an appeal of a
21 confirmation order as moot after appellant failed to seek a stay pending appeal, the
22 plan was substantially consummated and the relief requested would require undoing
23 too many transactions to the detriment of third parties).

24 Appellants were also obviously aware of the financial issues that
25 precipitated the Board's decision to sell the District's assets, including the District's
26

27 affirming bankruptcy court's order finding real property contract was executory
28 and subject to rejection by debtor where appellant failed to obtain a stay pending
appeal and debtor sold property to third party).

1 liquidity crisis, and the urgency with which the District needed to close the Sale in
2 face of the prospect that it might have to cease operation of the Hospitals.

3 **2. The Plan Has Been Substantially Consummated and the**
4 **Transactions on Which the Plan was Based Cannot be Unraveled.**

5 In the absence of a stay, the Plan was substantially consummated and the
6 transactions entered into under the Plan cannot now be reversed. *In re Roberts Farms,*
7 *Inc.*, 652 F.2d at 796-98. Substantial consummation is defined as the:

8 (A) transfer of all or substantially all of the property
9 proposed by the plan to be transferred;

10 (B) assumption by the debtor or by the successor to the
11 debtor under the plan of the business or the management of
12 all or substantially all of the property dealt with by the plan;
and

(C) commencement of distribution under the plan.

13 11 U.S.C. § 1101(2). Although section 1101 of the Bankruptcy Code is not applicable
14 to cases filed under chapter 9, the same concepts of finality and principles of equity
15 apply to chapter 9 plans.

16 In *In re Roberts Farms, Inc.* 652 F.2d 793, as in this case, the plan was
17 based on a sale of assets. The sale could not be modified without disrupting the plan
18 because, as with the District's Plan, "the property transactions do not stand
19 independently and apart from the plan of arrangement." *Id.* at 797. Dismissing the
20 appeals as moot, the court explained:

21 [M]any intricate and involved transactions . . . were
22 contemplated by the plan of arrangement (even to and
23 including liquidation and reorganization of the debtor
24 corporation) and stand solely upon the order confirming the
25 plan of arrangement for court approval and confirmation of
26 the transactions. . . . Certainly, reversal of the order
27 confirming the plan of arrangement, which would knock the
28 props out from under the authorization for every transaction
that has taken place, would do nothing other than create an
unmanageable, uncontrollable situation for the Bankruptcy
Court.

Id.

1 These considerations apply with particularly compelling force to this
 2 Appeal, as it involves the fate of two hospitals whose smooth and uninterrupted
 3 operation is literally a matter of life and death. PHH now owns and operates the
 4 Hospitals and the recovery and treatment center. PHH's lenders have been granted
 5 liens on the purchased assets. PHH has assumed obligations under more than 400
 6 contracts. Pursuant to the Plan and the ASA, severance benefits, paid time off, and
 7 other benefits have been paid out to the District's employees.

8 Meanwhile, in the aftermath of the Sale closing, the District has
 9 disbanded its management and terminated all employees who worked at the Hospitals
 10 and treatment center. The District has no employees and is in no position to resume
 11 the operation of the Hospitals. The District has already distributed most of the
 12 proceeds that the District received from PHH to the District's creditors. The only
 13 significant tasks that remain under the Plan are the completion of the claims review
 14 process and the distributions to be made by the Class 2A Claims
 15 Allowance/Disbursing Agent. Klausner Decl. ¶ 13. The Plan has been substantially
 16 consummated, and cannot now be "undone."

17 **3. A Reversal of the Confirmation Order Would Unjustly Affect The**
 18 **Rights of Numerous Third Parties Not Before The Court And Would**
 19 **Create Massive Chaos for the Bankruptcy Court, the District and**
 Such Parties.

20 There can be no question that reversal of the Confirmation Order and the
 21 Sale to PHH on Appeal would adversely affect the rights and interests of, and require
 22 relief against, a multitude of persons and entities not before the Court. First, on the
 23 Closing Date, PHH transferred just under \$60 million to the District, and the District
 24 has since distributed the vast majority of this money to its creditors as required by the
 25 Plan. These third party transferees are not parties to the Appeal, and this Court lacks
 26 jurisdiction over those creditors, or the relevant disbursing agents, to require
 27 disgorgement of the Sale proceeds used to satisfy claims. *See, e.g., Valley Nat'l. Bank*
 28 *of Ariz. v. Trustee for Westgate-Cal. Corp.*, 609 F.2d 1274, 1283 (9th Cir. 1979), *cert.*

1 *denied*, 444 U.S. 1015, 100 S. Ct. 666, 100 S. Ct. 667, 62 L. Ed. 2d 645 (1980)
 2 (holding that an action to negate a merger under former Bankruptcy Act is moot
 3 because the court lacks jurisdiction over the vast majority of persons affected by
 4 merger).¹⁹ Without the return of those funds, the District is in no position to
 5 reimburse the purchase price to PHH.

6 Second, PHH raised funds to finance its acquisition of the District's assets
 7 and to provide PHH with working capital by entering into transactions and agreements
 8 with lenders and investors acting in good faith. These third parties have made
 9 irreversible changes in position based on the legitimate expectation that they could
 10 rely on the Confirmation Order in the absence of a stay pending appeal. PHH's
 11 lenders were granted liens on the purchased assets. These lenders and investors are
 12 not parties to the Appeal and are not subject to the jurisdiction of this Court. *See, e.g.,*
 13 *In re Pub. Serv. Co. of N.H.*, 963 F.2d 469, 475-76 (1st Cir. 1992) (dismissing appeal
 14 of substantially consummated plan upon finding court lacks jurisdiction over non-
 15 party investors acting in reliance on order).²⁰ As such, the Appeal should be
 16 dismissed as moot based on the substantial adverse consequences that the relief
 17 requested would have on these third parties. *Id.*

18 Third, PHH has hired most of the District's 1,300 employees to manage
 19 and operate the Hospitals. Since such employees were terminated by the District,
 20 their accrued paid time off has been paid, and severance benefits have been paid to the
 21 District's employees who were not hired by PHH. These employees could not be
 22
 23

24 ¹⁹ *See also In re Pub. Serv. Co.*, 963 F.2d at 469 (dismissing appeal of substantially
 25 consummated plan upon finding court lacks jurisdiction over non-party investors
 26 acting in reliance on order); *Cent. States, Se. & Sw. Areas Pension Fund v. Cent.*
 27 *Trans., Inc.*, 841 F.2d 92, 96 (4th Cir. 1988) (finding court lacks jurisdiction "to
 impose substantial adverse consequences" on creditors receiving distributions
 under a consummated plan who are not party to an appeal).

28 ²⁰ *See also, Valley Nat'l Bank v. Trustee for Westgate-Cal. Corp.*, 609 F.2d at 1283;
Cent. States, Se. & Sw. Areas Pension Fund v. Cent. Trans., Inc., 841 F.2d at 96.

1 required to return any of these payments already received because they are not parties
2 to the Appeal and are not subject to the jurisdiction of this Court. *Id.*

3 Finally, and perhaps most importantly, if the Sale is unraveled, the
4 District's citizens, who voted in favor of the Sale and are also not parties to the
5 Appeal, will be left without critical local medical services. The District cannot now
6 operate the Hospitals or the recovery and treatment center as going concerns and,
7 instead, would be forced to immediately close the facilities and liquidate.

8 **4. The Public Policy of Affording Finality to Bankruptcy Judgments**
9 **Weighs in Favor of Dismissal.**

10 When courts addressing equitable mootness speak of the importance of
11 according "finality" to bankruptcy judgments, what they mean is that parties to
12 bankruptcy proceedings and third parties entering into transactions with a debtor in a
13 bankruptcy case that require court approval must be able to rely upon, and proceed on
14 the basis of, unstayed orders authorizing sales and confirming plans of reorganization.
15 *See, e.g., In re Pub. Serv. Co. of N.H.*, 963 F.2d at 471-72 (explaining that "the
16 equitable component centers on the important public policy favoring orderly
17 reorganization and settlement of debtor estates by 'affording finality to the judgments
18 of the bankruptcy court'").²¹ Otherwise, any disgruntled party – such as an
19 unsuccessful bidder who manufactures standing by buying a small claim – could force
20 bankruptcy court-approved transactions into an appellate limbo or bring a court-
21 approved reorganization to a grinding halt by the simple tactic of filing a notice of
22 appeal, without seeking a stay or posting a bond. The destructive impact of such a
23 construct on the administration of bankruptcy cases cannot be overstated: parties to
24 transactions with debtors that require bankruptcy court approval would either (i) walk
25 away from such transactions in face of an appeal if they were unwilling to remain

26 ²¹ *See also, e.g., In re Cont'l Airlines*, 91 F.3d at 562 (finding that "[h]igh on the list
27 of prudential considerations taken into account by courts considering whether to
28 allow an appeal following a consummated reorganization is the reliance by third
parties, in particular investors, on the finality of the transaction").

1 committed to the transaction for the duration of two levels of appeal,²² or (ii) insist on
 2 a substantial discount to the purchase price to compensate for the risk that a
 3 transaction that closed in reliance on an unstayed order could be "undone" months or
 4 years after it has closed. Courts developed the prudential doctrine of equitable
 5 mootness precisely to avoid such a value-restrictive structure.

6 In this case, the policy of affording "finality" to the Confirmation Order
 7 requires that, absent a stay, the District, PHH, PHH's lenders and investors, and others
 8 be able to rely on the Confirmation Order and to close the Sale and implement the
 9 Plan without risk. The principle of finality requires that the actions that were taken
 10 pursuant to the unstayed Confirmation Order not be "undone."

11 **D. The Appeal is Constitutionally Moot and Must be Dismissed for Lack of**
 12 **Jurisdiction, Because There is No Remedy Available to Appellants.**

13 Finally, the Appeal is also constitutionally moot because there is no
 14 longer any effective relief available to the Appellants. The relief requested in the
 15 Appeal necessitates that the Sale be reversed. This would require PHH to return fully
 16 functioning Hospitals and the recovery and treatment center to the District. This relief
 17 is not available. *See, e.g., Valley Nat'l Bank v. Trustee for Westgate-Cal. Corp.*, 609
 18 F.2d at 1283 (holding that an action to negate a merger is moot because the court lacks
 19 jurisdiction over the vast majority of persons affected by merger).²³ The District
 20 cannot accept the return of the transferred assets. The assets sold under the
 21 Confirmation Order and ASA included two operating Hospitals and a recovery and
 22 treatment center operating as going concern businesses. As already explained, the
 23 District is no longer able to operate or manage the facilities or care for their patients.
 24 The District has no contracts, no working capital, and no employees to operate the
 25 Hospitals.

26
 27 ²² From a final bankruptcy court order, parties may appeal to the district court or
 bankruptcy appellate panel, followed by an appeal to the circuit court of appeals.

28 ²³ *See also* cases cited *supra* note 19.

1 Because there is no relief available to the Appellants, the only function
2 remaining for the Court is to announce its lack of jurisdiction and dismiss the Appeal.
3 *See, e.g., Steel Co. v. Citizens for a Better Env't*, 523 U.S. at 94-95; *Ruvalcaba v. City*
4 *of Los Angeles*, 167 F.3d at 520.

5 **IV. CONCLUSION**

6 For all of the reasons set forth herein, the District respectfully requests
7 that this Court dismiss the Appeal on mootness grounds and grant such other relief as
8 this Court deems to be just and proper.

9 Respectfully submitted,

10 Dated: October 22, 2010

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